PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 08-06-001 ET AL.:

This is the proposed decision of ALJ Miles. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's September 17, 2015, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ DOROTHY J. DUDA for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ MILES (Mailed 8/12/2015**)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of Demand Response Programs, Goals and Budgets for 2009 - 2011.	Application 08-06-001 (Filed June 2, 2008)
And Related Matters.	Application 08-06-002 Application 08-06-003

DECISION DENYING THE PETITION FOR MODIFICATION FILED BY PURESENSE ENVIRONMENTAL, INC.

Summary

This decision denies PureSense Environmental, Inc.'s Petition for Modification of California Public Utilities Commission Decision 09-08-027 dated July 5, 2012 (Petition to Modify), which requests that the Commission waive penalties associated with its participation in Pacific Gas and Electric's 2010 demand response program.

Application (A.) 08-06-001, A.08-06-002 and A.08-06-003 are closed.

1. Background

In Decision (D.) 09-08-027, the Commission established demand response activities and budgets for Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) for 2009 through 2011. When activated, demand response programs require participating customers to curtail their load in the event of a forecasted or

actual system emergency. Participants that do not deliver 50% of their nominated capacity are subject to penalties.[1]

PureSense Environmental, Inc. (PureSense) was approved to act as a demand response aggregator on behalf of agricultural business through the PG&E Capacity Bidding Program (CBP) in 2011[2]. PureSense nominated capacity for 22 customers within the agricultural industry between June and September 2011.[3] During this period, PureSense responded to curtailment calls for nine demand response events.[4] PureSense received a settlement summary from PG&E in October 2011 which showed that PureSense had over-nominated its capacity and was assessed penalties of $73,825.13. PureSense then realized that it had incorrectly calculated the baseline for its customers, an error that it contends was partly PG&E's responsibility.[5]

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[1] D.09-08-027 at 47

[2] PureSense signed an Agreement for Aggregators Participating in the Capacity Bidding Program on February 24, 2011 but first nominated customer load in June 2011.

[3] PureSense's participation was measured using a 10-in-10 baseline with day of adjustment methodology which calculated the average use for each hour of the immediate prior ten non-holiday weekdays prior to a curtailment call. [*See* PureSense's July 5, 2012 Petition for Modification (Petition).]

[4] In response to the calls, PureSense's customers reduced their electricity consumption by an average of 304 kilowatts (kWh) or 64% below their baseline energy consumption. (*See* Testimony of Ken Nichols, page 4 and Exhibit 1.)

[5] PureSense contends that D.09-08-027 required PG&E to encourage customers with highly variable load profiles (such as agricultural industry customers), to steer clear of participation in programs like the CBP that are dependent on the calculation of baselines for measuring performance. (*See* D.09-08-027 at 141-42 and Ordering Paragraph 29.)

On July 5, 2012, PureSense filed a Petition to Modify[6] to request that the Commission add a footnote to the end of Ordering Paragraph 29, in order to waive penalties incurred by PureSense under the CBP during the 2011 demand response season. For the reasons discussed below, we deny the petition.

2. Parties' Positions

2.1. PureSense

PureSense requests to be relieved of penalties because it claims that it did not have accurate knowledge of how to calculate the baseline for its customers. It reasons that it should not be penalized because, despite the fact that it began with an incorrect baseline figure, its customers in fact reduced usage by 64 percent in response to curtailment requests.[7] In addition, PureSense argues that the Commission placed responsibility upon PG&E and other IOUs to conduct a study and report back on the definition of "highly variable load customers"[8] and to "propose a plan for steering highly variable load customers toward demand response programs that do not require baseline calculation."[9]

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[6] D.09-08-027 was issued August 24, 2009. Rule 16.4(d) requires a petition for modification to be filed and served within one year of the effective date of the decision it proposes to modify unless the petition could not have been presented within one year. PureSense contends that it could not have filed the petition for modification by August 24, 2010 because it did not receive its first bill from PG&E under the CBP until December 27, 2011. PureSense states a reasonable basis for the late filing, and the Commission appropriately accepted its Petition for filing.

[7] *See* Exhibit 1 to testimony of Ken Nichols. This reflects a load reduction of 64% compared to the average baseline use of 0.491 MW.

[8] Reply of PureSense dated August 16, 2012 citing D.09-08-027 at 4.

[9] *Id.*

PureSense argues that, under PG&E's own study,[10] it is clear that customers within the agricultural industry meet the definition of 'highly variable load customers." Therefore, says PureSense, PG&E had an obligation to steer its customers away from the CBP and into the Critical Peak Pricing program, which is not baseline dependent.[11] PureSense withdrew from acting as an aggregator under the CBP and transferred all of its aggregation activities to Constellation New Energy.[12]

2.2. PG&E

PG&E's August 6, 2012 response acknowledges inherent difficulties in nominating agricultural customers.[13] However, PG&E points out that agricultural customers were successfully nominated in other aggregator portfolios.[14] PG&E contends that the penalties billed to PureSense were properly calculated under Electric Schedule E-CBP and that it would be inequitable for one aggregator to be relieved from penalties while other aggregators pay the required penalties.[15]

While PG&E agrees that PureSense reduced load by 64 percent when compared to an average baseline use of 0.491 MW, it notes that PureSense

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[10] *See* Declaration of Ken Nichols, Exhibit 3 "Highly Volatile-Load Customer Study for Southern California Edison, Pacific Gas and Electric Company and San Diego Gas & Electric" by Christensen Associates Energy Consulting, dated October 27, 2010.

[11] Reply of PureSense dated August 16, 2012 at 2.

[12] Petition To Modify at 3.

[13] Response of PG&E dated August 6, 2012 at 2.

[14] *Id.*

[15] *Id.* at 1-2.

nominated an average 4.181 MW of load reduction, a figure that PG&E says is 9 times the actual available load reduction capability of PureSense's customers.[16] PG&E avers that the wide disparity between PureSense's nominated capacity and the actual customer load/performance, demonstrates that PureSense did not accurately understand the load reduction that each of its customers was capable of providing.[17] However, PG&E disputes PureSense's claim that it did not have information about its customer's loads and performance until after the 2001 season ended, because its practice is to provide all aggregators access to raw data approximately 5-10 business days after an event. Thus, PG&E says that if PureSense had utilized the raw data, it would have seen that its nominated load reduction consistently far exceeded the baseline load of its customers.[18] When load reduction is calculated using PureSense's baseline of 4.181 MW, its customers produced only an 8 percent reduction in the 2011 season,[19] which is the cause of the penalties.

PG&E further argues that it would be procedurally improper to modify D.09-08-027 because the decision itself is not incorrect. Rather, PureSense seeks to avoid imposition of the provisions of the Decision.[20]

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[16] *Id.* at 4.

[17] *Id.* at 5.

[18] *Id.* at 7.

[19] *Id.* at 4.

[20] *Id.* at 6.

2.3. SDG&E

SDG&E filed a response to the Petition to Modify supporting PG&E's procedural argument.[21] SDG&E argues that, although the issues raised by PureSense concerning its capacity nominations and baseline calculations are important elements of program design and operation, they do not demonstrate any legal, factual or technical error in D.09-08-027, which would justify making changes to the decision.[22] SDG&E expresses concern that were the Commission to grant the Petition to Modify and give PureSense the relief from penalties that it seeks, this would potentially establish precedent that would permit any party who has an unfavorable outcome while participating in any utility demand response program, to seek to modify the terms, conditions or provisions of the program after the fact to suit their individual circumstances.[23] SDG&E argues that parties have the opportunity to address utility proposals and to present their own proposals for demand response program structures during the application process. It reasons that, once the Commission has considered the record evidence and rendered a decision, all parties should then be bound by the adopted structure of the programs.[24] SDG&E argues that granting the Petition to Modify under the circumstances that PureSense describes, would create tremendous uncertainty over program participation and load reduction delivery

[21] Response of San Diego Gas & Electric Company to PureSense Environmental, Inc.'s Petition for Modification of California Public Utilities Commission Decision 09-08-027 dated August 6, 2012 (SDG&E August 6, 2012 Response).

[22] SDG&E August 6, 2012 Response at 2.

[23] *Id.* at 3.

[24] *Id.*

and jeopardize the availability of demand response programs for resource adequacy counting and credit.[25] SDG&E suggests that the issues raised by PureSense are appropriately pursued through a Complaint or Alternative Dispute Resolution (ADR) proceeding.

3. Discussion

We agree with PG&E and SDG&E that the Petition to Modify should be denied.

Section 453 of the Public Utilities Code[26] requires equitable treatment of aggregators and it would be inequitable for one aggregator to be relieved from penalties while other aggregators pay the required penalties.

We find convincing PG&E's argument that PureSense had the same access to information as other aggregators enrolled in the CBP. PureSense admits that it did not understand the methodology for calculating baselines for its agricultural customers, which we consider to be its responsibility. Although PureSense is correct that in D.09-08-027, we placed responsibility upon PG&E and other IOUs to propose a plan for steering highly variable load customers toward demand response programs that do not require baseline calculation, we do not agree that this relieves an aggregator from its obligation to be knowledgeable about the appropriate loads of customers that it represents and to carefully monitor and utilize the data available to it. PureSense has offered no explanation about why it chose to act as an aggregator of demand response activities for customers in

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[25] *Id.*

[26] §453(a) "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage."

the agricultural industry when it was not familiar with the parameters under which such customers operated.

PureSense indicates that it has worked with PG&E in an attempt to resolve the penalties without need for Commission intervention, but has reached impasse.[27] SDG&E suggests that PureSense and PG&E agree to seek Commission assistance through an ADR proceeding, if they believe that this would be helpful. Resolution ALJ-185, which established the Commission's ADR program, authorizes use of ADR in suitable informal matters, Commission resources permitting. If the parties wish to pursue ADR, they should contact the Commission's ADR Coordinator. Additional information is available on the Commission's website at http://www.cpuc.ca.gov/PUC/adr. However, we conclude that the facts here do not provide an appropriate basis for granting the Petition to Modify, and the petition is denied.

4. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

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[27] Petition to Modify at 7.

Findings of Fact

1. PureSense was approved to act as a demand response aggregator on behalf of agricultural customers through the Pacific Gas and Electric Capacity Bidding Program in 2011.

2. PureSense incorrectly calculated the average baseline for its agricultural customers and therefore, did not deliver the amount of demand response it committed to provide through the program.

3. The penalty structure for non-performance under the Capacity Bidding Program is set forth in Schedule E-CBP (Advice Letter No. 3560-E-B). All third party demand aggregators are held to the Commission approved structure.

4. Section 453 of the Public Utilities Code prohibits public utilities from granting preference or advantage as to rates, charges, service, facilities or in any other respect.

5. PG&E may seek penalties of $73,825 against PureSense.

Conclusions of Law

1. Section 453 of the Public Utilities Code prohibits public utilities from granting preference or advantage as to rates, charges, service, facilities or in any other respect, therefore, it is appropriate for Pacific Gas and Electric to seek a penalty of $73,825 from PureSense Environmental, Inc. for nonperformance under the Capacity Bidding Program.

2. There is no basis to modify D.09-08-027 in order to grant a waiver of the penalty owed by PureSense Environmental, Inc.

O R D E R

IT IS ORDERED that:

1. The Petition of PureSense Environmental, Inc. to Modify Decision 09-08-027 is denied.
2. Application (A.) 08-06-001, A.08-06-002 and A.08-06-003 are closed.

This order is effective today.

Dated _____, at San Francisco, California.